MDL-2197

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: DEPUY ORTHOPAEDICS, INC., ASR HIP IMPLANT PRODUCTS LIABILITY LITIGATION

MDL No. 2197

DEFENDANTS DEPUY ORTHOPAEDICS, INC., JOHNSON & JOHNSON SERVICES, INC., AND JOHNSON & JOHNSON'S BRIEF IN OPPOSITION TO MOTION OF PLAINTIFF FOR TRANSFER OF ACTIONS TO THE DISTRICT OF NEW JERSEY PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS

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I. INTRODUCTION AND SUMMARY OF DEFENDANTS' BRIEF IN OPPOSITION

Plaintiff Maurice Brigham seeks to transfer cases arising out of the August 26, 2010 voluntary recall of two hip implant systems – the ASR™ XL Acetabular System and the ASR™ Hip Resurfacing System (ASR™ Hip Systems) – to the District of New Jersey before the Honorable Susan D. Wigenton for coordinated and consolidated pretrial proceedings under 28 U.S.C. § 1407. Defendants do not oppose transfer and consolidation of the ASR™ XL Acetabular Hip System[1] cases to an MDL court to facilitate the resolution of transferred claims involving the ASR™ XL Acetabular Hip System ("ASR™ XL System"). They do, however, oppose Plaintiff's proposed selection of the Honorable Susan D. Wigenton to preside over these cases.

Specifically, Defendants believe that the pendency of the *In re Zimmer Durom Cup Products Liability Litigation*, MDL No. 2158 ("Zimmer MDL") before Judge Wigenton is in fact why the ASR™ Hip Implant Products Liability Litigation should *not* be transferred to her court. Aside from the significant burden which another MDL proceeding will impose on Judge Wigenton, to the probable detriment of the Zimmer MDL as well as any subsequent proceedings involving the ASR™ XL System, the pendency of two concurrent MDL proceedings involving distinctly different hip products sold by competing medical device companies is likely to cause unnecessary complications and unintended prejudice to all parties.

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[1] The DePuy ***ASR™ Hip Resurfacing System*** is a different implant than the ASR™ XL Acetabular Hip System. The ***ASR™ Hip Resurfacing System*** was not manufactured in the United States, nor used by any of the Plaintiffs seeking MDL coordination. As such, there simply are no ***ASR™ Hip Resurfacing System*** cases to transfer and coordinate. In addition, as discussed *infra*, Defendants oppose the transfer of three of the five actions identified in Plaintiff's Schedule of Actions because they do not involve the ASR™ XL System.

Given this Panel's interest in choosing a forum which will promote the "just and efficient conduct" of transferred litigation, Defendants submit that there are several other districts and transferee judges better suited to manage the ASR™ XL System litigation. They are: the Northern District of Indiana at South Bend before Judge Robert Miller and the Northern District of Ohio at Toledo before Judge David Katz or Judge Jack Zouhary, given their proximity to DePuy's headquarters in Warsaw, Indiana, and with respect to Judge Miller, his experience in successfully managing an MDL (*In Re FedEx Ground Package System, Inc., Employment Practices Litigation* (No. II), MDL 1700), and with respect to Judge Katz, his experience successfully managing a large pharmaceutical MDL (*In re Ortho Evra Products Liability Litigation*, MDL 1742); Judge Robert B. Kugler of the District of New Jersey (Camden Division), who not only has a pending ASR™ XL System case (*Short v. DePuy Orthopaedics, Inc., et al*., Case No. 1:10-cv-04783), but also has past experience in handling orthopedic implant litigation; and Judge Joel A. Pisano of the District of New Jersey (Trenton Division), who also has a pending ASR™ XL System case (*Aiken v. DePuy Orthopaedics, Inc., et al*., No. 3:10-04545-JAP-DEA).

II. PERTINENT FACTS

Defendant DePuy Orthopaedics, Inc. ("DePuy") is the company responsible for the design, manufacture, marketing, and sale of the ASR™ XL Acetabular System within the United States. It is headquartered in Warsaw, Indiana, and is one of the leading providers of implants in the U.S. hip and knee replacement market. Johnson & Johnson Services, Inc. is a Johnson &

Johnson company, but neither designed, manufactured, nor sold the ASR™ XL System, thus making DePuy the real party in interest in this litigation.[2]

On August 26, 2010, DePuy initiated a voluntary recall of the DePuy ASR™ Hip Systems. Within days, the Plaintiff and named class representative (a citizen of California) in *Maurice Brigham v. DePuy Orthopaedics, Inc., et al.* (currently pending in the United States District Court for the Northern District of California) moved this Panel for the transfer of five federal ASR™ Hip System cases to the District Court of New Jersey for coordination and consolidation before Judge Wigenton. Of note, only two of the five federal cases (*Brigham v. DePuy Orthopaedics, Inc., et al.*, U.S.D.C., N.D. Cal., Case No. 3:10-cv-03886-SI and *Margenau v. DePuy Orthopaedics, Inc.*, U.S.D.C., M.D. Fla., Case No. 2:10-cv-00369-CEH-SPC) concern the recalled ASR™ XL System; the remaining three federal cases (*Fitzgerald v. DePuy Orthopaedics, Inc., et al.*, U.S.D.C., N.D. Ill., Case No. 1:10-cv-04822, *Bloom v. DePuy Orthopaedics, Inc.*, U.S.D.C., D. Md., Case No. 1:10-cv-02170-BEL, and *Williams v. DePuy Orthopaedics, Inc., et al.*, U.S.D.C., D. Utah, Case No. 2:10-cv-00691-CW) concern non-ASR™ Hip System components, some manufactured by DePuy and one by a competitor. Thus, these three cases should *not* be transferred and consolidated with the ASR™ XL System cases. A schedule of newly filed, related actions is attached hereto as Exh. A.

In his Class Action Complaint, Plaintiff generally alleges that: 1) defects in the ASR™ Hip Systems proximately caused injuries; and 2) Defendant's conduct in failing to timely disclose those alleged defects proximately caused injuries. (Pl.'s Br. in Support at 3.) In his motion to transfer, Plaintiff describes the ASR™ Hip Systems litigation as "likely to be vast in

[2] DePuy is the only Johnson & Johnson operating company properly named as a defendant in this litigation.

scope" "[e]ven by the standards of multidistrict litigation." In requesting Judge Wigenton of the District of New Jersey as the venue for this litigation, Plaintiff argues that it is the "most expedient" venue for the parties due to that District's previous handling of hip implant device litigation[3] and its current handling of the Zimmer MDL, over which Judge Wigenton is now presiding. (Pl.'s Br. in Support at 5-6.)

Plaintiffs in the Zimmer MDL have likewise underscored the vast nature of that litigation, informing this Panel that it would involve "thousands of patients across the United States" as the Zimmer Durom cup was implanted "in approximately 12,000 patients in the United States." (*See* Interested Party Response of Personal Injury Plaintiffs Lovelace and Walker in Support of Transfer and Coordination under 28 U.S.C. § 1407, at 1, 3, attached hereto at Exh. B.)

III. GIVEN THE ANTICIPATED SIZE AND SCOPE OF THESE TWO MDLs, AND THE FACT THAT ZIMMER IS ONE OF DEPUY'S MAJOR COMPETITORS IN THE U.S. HIP AND KNEE REPLACEMENT MARKET, IT WOULD BE UNWISE TO PUT THEM TOGETHER BEFORE THE SAME JUDGE. THE COMPLEXITIES RATHER THAN THE PROPOSED EFFICIENCIES WOULD BE SYNERGISTIC.

A. Legal Authority.

1. Consolidation requires common questions of fact.

Under 28 U.S.C. § 1407(a), the Panel may order centralization and transfer civil actions involving one or more common questions of fact if it determines that such a transfer "will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions." 28 U.S.C. § 1407. The statute likewise empowers the Panel to couple its order of transfer with a simultaneous separation and remand of any claims in an action that involve little

[3] Contrary to Plaintiff's representation, the *Inter-Op Hip Prothesis Products Liability Litigation*, MDL No. 1401 was not centralized in the District of New Jersey. It was centralized in the Northern District of Ohio and assigned to the Honorable Kathleen McDonald O'Malley.

or no factual overlap of the claims to be transferred. *See* Annotated Manual for Complex Litigation, 4th, § 20.131, "Request for Transfer" (2010).

The Panel has consistently exercised its power to separate and remand claims in product liability actions and specifically, has separated claims or actions involving prescription medicines in the same class, that are, as here, competitor products. For example, in *In re Vioxx Prods. Liab. Litig*., 360 F. Supp. 2d 1352, 1354 (J.P.M.L. 2005), this Panel separated the claims against G.D. Searle & Co. and Pfizer, Inc., the co-manufacturers of Celebrex (a COX-2 inhibitor) from the Vioxx (another COX-2 inhibitor) claims against Merck, and remanded those claims to be ultimately transferred to a different MDL court. *See also In re Zyprexa Prods. Liab. Litig.*, MDL Docket No. 1596, Order of Transfer and Simultaneous Separation and Remand of Certain Claims (J.P.M.L. Feb. 16, 2006), attached as Exh. C (transferring actions to the *Zyprexa* MDL, but ordering the simultaneous separation and remand of Risperdal® claims asserted against Janssen and Seroquel® claims asserted against Bristol-Myers); *see also In re Seroquel Prods. Liab. Litig*., 447 F. Supp. 2d 1376, 1378 (J.P.M.L. 2006) (claims involving prescription medicines other than Seroquel did not share sufficient questions of fact with Seroquel claims to warrant inclusion in the Seroquel MDL proceedings).

Likewise, where there are no common facts between claims relating to conduct forming the basis for legal liability, this Panel does not consolidate them. *See, e.g., In re Enron Corp. Securities, Derivative & "ERISA" Litig.*, 227 F. Supp. 2d 1389 (J.P.M.L. 2002) (declining to transfer 11 federal district court actions to MDL court because "the conduct purporting to form the basis for legal liability in the 11 New York actions is largely distinct from the operative conduct at issue in MDL 1446.").

2. Factors considered in the selection of an appropriate transfer forum.

The selection of an appropriate transferee forum depends greatly on the specific facts and circumstances of the litigation being considered for transfer and consolidation and involves a "balancing test" of several factors "based on the nuances of a particular litigation." *See* Robert A. Cahn, *A Look at the Judicial Panel on Multidistrict Litigation*, 72 F.R.D. 211, 214 (1977). Those factors include: 1) the location of relevant documents and witnesses; 2) the existence and numerosity of cases pending in other jurisdictions; 3) a centrally located forum for national litigation; 4) the backlog of a court's civil docket and the extent to which it is overtaxed with other MDL cases; and 5) the preference of the parties. *Multidistrict Litigation Manual, Practice Before the Judicial Panel on Multidistrict Litigation*, Herr, David F. (2007), at §§ 6:1-6:23; *In re Inter-Op Hip Prosthesis Prods. Liab. Litig.*, 149 F. Supp. 2d 931, 933-934 (J.P.M.L. 2001) (transferring to the Northern District of Ohio); *see also Annotated Manual for Complex Litigation*, 4th, § 20.14, at 281 ("Geographic centrality may also be persuasive, especially for nation-wide litigation. *See, e.g., In re African-American Slave Descendants Litigation*, 231 F. Supp. 2d 1357 (J.P.M.L. 2002) (Northern District of Illinois, Chicago – selected as transferee district for this reason)"); *In re Express Scripts, Inc., Pharmacy Benefits Mgmt. Litig.*, 368 F. Supp. 1356, 1357 (J.P.M.L. 2005) (transferring docket to district that "is conveniently located for many parties and witnesses").

The judge assigned to preside over an MDL is instructed, in planning and implementing case management, to "keep in mind the goal of bringing about a just resolution as speedily, inexpensively, and fairly as possible." Annotated Manual for Complex Litigation, 4th, § 10.1, at 10. To that end, "[i]n multi-party, multi-case litigation, the district court's success is largely

dependent upon its ability to uncomplicate matters." *In re Recticel Foam Corp.* (*In re San Juan Dupont Plaza Hotel Fire Litig.*), 859 F.2d 1000, 1004 (1st Cir. 1988).

B. Consolidation in the District Court of New Jersey Before Judge Wigenton Will Not Accomplish the Goals of 28 U.S.C. § 1407.

Although DePuy's ASR™ XL System and Zimmer's Durom Cup product fall within a generic category of metal-on-metal hip replacement devices, they are distinctly different products in almost every other respect. The ASR™ XL System comprises both an acetabular cup (implanted in the pelvis) and a femoral ball (implanted on the taper of a femoral component). The *Zimmer Durom Cup* litigation focuses only on the cup component. Even if one compares only the acetabular cups at issue, those products have significantly different design features, materials and manufacturing processes,[4] surgical technique instructions, product literature, and the like. They were sold during different periods of time[5] and on the prescription of surgeons who most commonly used one or the other, but not both products. The products had different (proprietary) testing and development histories and, of course, the company witnesses as to development and marketing of each product will be different. The amount, quality, and timing of receipt by the companies of data from clinical usage of each product were different, and each company's actions with respect to suspension and termination of marketing of the products differed.

In short, the DePuy ASR™ XL System and the Zimmer Durom Cup are different products, which deserve individualized and product-specific case management by separate MDL

[4] *E.g.*, in the Durom Cup, the porous-coated exterior surface of the cup, which serves as its interface with the acetabulum bone, is comprised of plasma-sprayed titanium alloy. The ASR cup has cobalt-chromium alloy beads sintered to the cup surface.

[5] The Durom Cup was sold in the United States from 2006 to 2009. The ASR™ XL system was sold in the United States from 2005 to 2010.

judges to promote the goal of a "just resolution" of each MDL "as speedily, inexpensively, and fairly as possible" for each of them. Combining the ASR™ and Zimmer litigations before the same judge will accomplish just the opposite. And while an MDL court's success is largely dependent upon its ability to "uncomplicate" matters (*infra* at 5), placing these two MDLs before the same judge will do nothing but stymie the successful completion of that task for each MDL.

C. DePuy's Proposed Alternative Venues and Transferee Judges Achieve the Goals and Efficiencies 28 U.S.C. § 1407 Envisions.

There are several venues and transferee district judges better suited to meet the goals of 28 U.S.C. § 1407 than the venue recommended by Plaintiff. They include the Northern District of Indiana at South Bend before Judge Robert Miller, the Northern District of Ohio at Toledo before Judge David Katz or Judge Jack Zouhary, and the District of New Jersey before Judge Robert B. Kugler (Camden Division) or Judge Joel A. Pisano (Trenton Division), both of whom already have pending ASR™ XL System cases. Judge Kugler also has significant past experience with the factual and legal issues involved in orthopedic implant litigation.

This Panel typically considers the location of the parties, witnesses, and documents in selecting a transferee forum. *See, e.g., In re Express Scripts, Inc., Pharmacy Benefits Mgmt. Litig*., 368 F. Supp. at 357; *see also In re Thaxton Group, Inc. Sec. Litig*., 323 F. Supp. 2d 1374, 1375 (J.P.M.L. 2004); *In re Cuisinart*, 506 F. Supp. 651, 653 (J.P.M.L. 1981). Because the Plaintiffs in the ASR™ XL System litigation will be geographically diverse, there is no single district that is convenient for Plaintiffs. There are, however, districts that offer the distinct advantage of proximity to DePuy's witnesses and domestic documents, and they are geographically centrally located: The Northern District of Indiana at South Bend and the Northern District of Ohio at Toledo. DePuy's corporate headquarters are in Warsaw, Indiana, which is about one hour away from South Bend, Indiana, where Judge Robert Miller, of the

Northern District of Indiana presides. Judge Miller is an experienced MDL judge. South Bend offers sufficient travel and logistical support for all parties and counsel.

The Northern District of Ohio at Toledo is also convenient for the common witnesses and documents in these cases. Like South Bend, Toledo has sufficient travel and logistical support for all parties and counsel. Judge David Katz has overseen a large and complicated MDL which is now winding down to conclusion (*In re Ortho Evra Products Liability Litigation*, MDL 1742). Judge Jack Zouhary has the experience necessary to handle an MDL, and has previously expressed an interest in managing MDL litigation.

DePuy also proposes two District of New Jersey judges – Judge Robert B. Kugler (Camden Division) and Judge Joel A. Pisano (Trenton Division). Both currently have pending ASR™ XL System cases, *Short v. DePuy Orthopaedics, Inc. et al.*, D.N.J., Case No. 1:10-cv-04783 and *Aiken v. DePuy Orthopaedics, Inc. et al*., D.N.J., Case No. 3:10-04545-JAP-DEA, respectively. In addition, Judge Kugler has extensive prior experience handling orthopaedic implant litigation. From 2003 to 2005, Judge Kugler, with the assistance of Magistrate Judge Ann Marie Donio (who has been assigned as the magistrate Judge to the pending ASR™ XL System case) , presided over 50 cases involving various types of prosthetic knee and hip systems manufactured by DePuy Orthopaedics, Inc. and Johnson & Johnson Professional, Inc. The cases were: 1) not formally denominated an MDL, but were treated as such by the parties and the Court; 2) organized for the purpose of discovery into eight "waves"; and 3) ultimately all resolved in a timely fashion. The Camden vicinage is very close to Philadelphia, and the Trenton vicinage is easily accessible to Newark and Philadelphia, facilitating travel for all.

IV. CONCLUSION

For these reasons, Defendants do not oppose transferring consolidation of the ASR™ XL Acetabular Hip System cases to an MDL court, but do oppose Plaintiff's proposed selection of the Honorable Susan D. Wigenton to preside over these cases. In the alternative, Defendants request that the Panel consider Defendants' proposed venue and transferee judge selections.

Respectfully submitted,

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BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re DEPUY ORTHOPAEDICS, INC., ASR HIP IMPLANT PRODUCTS LIABILITY LITIGATION

MDL No. 2197

PROOF OF SERVICE

I hereby certify that a copy of the foregoing **DEFENDANTS DEPUY ORTHOPAEDICS, INC., JOHNSON & JOHNSON SERVICES, INC., AND JOHNSON & JOHNSON'S BRIEF IN OPPOSITION TO MOTION OF PLAINTIFF FOR TRANSFER OF ACTIONS TO THE DISTRICT OF NEW JERSEY PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS** was served via regular U.S. Mail, postage prepaid, this 24th day of September, 2010, upon each attorney listed on the attached Panel Service List.

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Docket: 2197 - IN RE: DePuy Orthopaedics, Inc., ASR Hip Implant Products Liability Litigation
Status: Pending on / /
Transferee District: Judge: Printed on 09/20/2010

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BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: DEPUY ORTHOPAEDICS, INC., ASR HIP IMPLANT PRODUCTS LIABILITY LITIGATION

MDL No. 2197

SCHEDULE OF NEWLY FILED RELATED ACTIONS

Case Description	Court	Civil Action No.	Judge
Plaintiff: Bubernak, Beth **Defendant:** DePuy Orthopaedics, Inc.	C.D. California	2:10-cv-06542-SVW-JC	Stephen V. Wilson
Plaintiff: Starry, Lora **Defendant:** DePuy Orthopaedics, Inc.	S.D. California	3:10-cv-01813-H-BGS	Marilyn L. Huff
Plaintiff: Christine Alspaugh **Defendant**: DePuy Orthopaedics, Inc.	N.D. Illinois	1:10-cv-06000	Charles R. Norgle, Sr.
Plaintiffs: Long, Tabetha and Paul **Defendant**: DePuy Orthopaedics, Inc.	N.D. Illinois	1:10-cv-05785	Amy J. St. Eve
Plaintiff: Mosely, Ida **Defendants:** DePuy Orthopaedics, Inc. Johnson & Johnson Services, Inc.	E.D. Louisiana	2:10-cv-03206-EEF-JCW	Eldon E. Fallon
Plaintiff: Aiken, Vicki **Defendants**: DePuy Orthopaedics, Inc. Johnson & Johnson	D. New Jersey	3:10-04545-JAP-DEA	Joel A. Pisano

EXHIBIT A

Case Description	Court	Civil Action No.	Judge
Plaintiff: Short, Jason **Defendants**: DePuy Orthopaedics, Inc. Johnson & Johnson	D. New Jersey	1:10-cv-04783	Robert B. Kugler
Plaintiff: Elizabeth Mixon **Defendants:** DePuy Orthopaedics, Inc.	D. South Carolina	0:10-cv-02422–MJP	Matthew J. Perry, Jr.
Plaintiff: Frey, Jerre **Defendants**: DePuy Orthopaedics, Inc. Johnson & Johnson Services, Inc.	N.D. Texas	3:10-cv-01787-B	Jane J. Boyle

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BEFORE THE JUDICIAL PANEL ON

MULTIDISTRICT LITIGATION

IN RE ZIMMER DUROM HIP CUP PRODUCTS LITIGATION	MDL Docket No. 2158

INTERESTED PARTY RESPONSE OF PERSONAL INJURY PLAINTIFFS *LOVELACE* AND *WALKER* IN SUPPORT OF TRANSFER AND COORDINATION UNDER 28 U.S.C. § 1407

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EXHIBIT B

INTERESTED PARTY RESPONSE OF PERSONAL INJURY PLAINTIFFS *LOVELACE* and *WALKER*
IN SUPPORT OF TRANSFER AND COORDINATION UNDER 28 U.S.C. § 1407

INTRODUCTION

Pursuant to 28 U.S.C. § 1407 and the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, the undersigned Plaintiffs in the two federal personal injury/ product liability actions respectfully submit their Interested Party Response in support of the transfer and centralization of all federal actions arising from the defective medical device known and marketed as the "Durom Cup." These actions include personal injury suits filed by individuals implanted with the defective acetabular component and their families.

AN MDL IS APPROPRIATE HERE WHERE THERE ARE COMMON QUESTIONS OF FACT

All of the actions brought to the Panel's attention by the moving parties to date share key common questions of fact. These questions relate to the nature of the defect in the medical device implanted into thousands of patients across the United States that has caused personal injuries and in most, required explanting and replacing with an alternative acetabular component; and Zimmer's ongoing conduct in concealing and failing to correct the impact of the marketing and sale of these defective orthopedic devices.

Zimmer Holdings, Inc., the corporate parent of Zimmer, Inc. and Zimmer US, Inc., (hereinafter collectively "Zimmer") is the largest manufacturer of orthopedic devices used for implantation in hips and knees throughout the world. Zimmer, founded in 1927, is one of the leading competitors in the U.S. hip and knee replacement market and accounted for seventy percent of the market in 2008. In 2008, the U.S. hip and knee replacement market was valued at $6.7 billion dollars, with the hip replacement market contributing thirty-eight percent of the market at roughly $2.5 billion dollars. According to Zimmer's 2008 Annual 10-K Report,

Zimmer was number one in global market share for reconstructive hip components. In the period ending December 2008, Zimmer reported $1,279.5 million in hip component sales. Zimmer's total 2008 sales exceeded $4 billion.

Zimmer designs, develops, manufactures, markets, tests, distributes and sells reconstructive orthopedic implants, including joint, dental and spinal implants, trauma products and related orthopedic surgical products. Zimmer's related orthopedic surgical products include surgical supplies and instruments designed to aid in orthopedic surgical procedures. Zimmer also has a limited array of sports medicine products. Zimmer's primary customers include musculosketal surgeons, neurosurgeons, oral surgeons, dentists, hospitals, distributors, healthcare dealers and, in their capacity as agents, healthcare purchasing organizations or buying groups. These customers range from large multi-national enterprises to independent surgeons.

The product at issue in this litigation is marketed as Zimmer's Durom Cup. It is an orthopedic device used in total hip replacement surgeries. Hip replacement surgery, also known as hip arthroplasty, is a surgical procedure in which the patient's hip joint is resurfaced and replaced with an artificial implant. Hip replacement surgery is typically used to repair joint/bone damage or to treat arthritis pain in the hip joint area. The hip joint is in essence a large ball-and-socket joint composed of two parts: the head of the thighbone, or femur; and the acetabulum, a cup-shaped bone in the pelvis. Therefore, hip replacement surgery traditionally consists of two tasks: (1) replacing the end of the femur, or thighbone, with an artificial "ball," typically made of metal or stainless steel; and (2) resurfacing the hip socket using a metal shell and plastic liner, into which the ball attached to the femur will fit. The Durom Cup is that metal shell into which the ball attached to the femur is intended to fit.

During hip replacement surgery, damaged portions of the hip are replaced with

smooth, durable artificial surfaces to allow the joint to function properly. The Durom Cup is not cemented or screwed in place during implantation. Instead, it was designed to bond to the patient's hip bone. The outside of the Durom Cup is porous, and has been sprayed with a highly engineered substance that is intended to facilitate the cup's acceptance by the human body. It is purportedly intended that the patient's own bone will grow into the exterior shell of the cup. This bone in-growth into the porous shell is what is intended to hold the cup in place. Rather than functioning in the intended manner, the Durom Cup implant resists bone growth and as a result, instead of adhering to the bone, it comes loose and/or pops free from the hip, which can cause damage to the pelvic bone. This unintended result causes extreme and devastating pain and necessitates revision surgery to remove the failed Durom Cup and replace it with a product that functions properly. Zimmer sold the Durom Cup to be implanted in approximately 12,000 patients in the United States. It was reported that Zimmer suspended sales of the Durom Cup in July of 2008. The Durom Cup is part of a system that was widely sold as being more durable, especially intended for use in young and active patients, like Plaintiffs Christine Walker and Todd Lovelace.

But many questions remain unanswered. It is unclear, at this time, whether Zimmer has in fact identified the root cause of its unintended defect, whether it is fixing this problem in its "market suspension period", or, indeed, whether such a "fix" as yet exists. In the meantime, thousands of patients are concerned that their hip implants have failed, and yet the failures have gone undetected or unrecognized by their doctors, since Zimmer has downplayed the problems with these components. For the undersigned Plaintiffs, however, these questions have unfortunately already been answered, by pain and belated revision surgeries, which did not completely fix the problem and abate the pain – because the best chance for recovery was lost

due to the failure of the defective implant. They join in urging centralized and prioritized discovery and trial preparation via MDL transfer.

Every litigation with which this Panel must contend is important as the parties agree that is true of this one. Each case needs the special handling of a transferee court. This complex medical device case requires the attention and energy of a district court blessed with a judge who has the energy and expertise to manage a case involving injured individuals, who each have brought similar medical device claims.

THE INJURY CLAIMS

Those who have been injured by the defective hip implant have begun to initiate lawsuits in state and federal courts throughout the United States. Interested Party Plaintiffs Todd and Lori Lovelace and Christine and Kenneth Walker have found that more than fifty-three lawsuits have been filed to date in federal courts[1], but the number will inevitably grow larger unless and until the defective implant problem is resolved. It is because of this recognition that the undersigned personal injury claimants seek centralized MDL proceedings. Interested Party Plaintiffs implore this Panel to transfer all of the related cases to a jurist who is willing and able to address their injury claims expeditiously, and to provide them with the redress, via adjudication or resolution, that they deserve.

The *Walker* and *Lovelace* cases involve serious injuries. Christine Walker, a 53-year-old former registered nurse from West Palm Beach, Florida, and her husband, Kenneth, have been significantly injured due to the implantation of the Durom Cup in Ms. Walker's left hip. On December 17, 2008, exactly one year after her hip implant surgery, Ms. Walker was forced to undergo a revision surgery to remove the Durom Cup. The acetabular cup was found

[1] See Schedule of Cases attached hereto as Exhibit A.

to be completely loose, with no porous bone growth in the cup whatsoever. Ms. Walker never fully recovered from the harm of the defective Durom Cup. She has been unable to return to work, or even to attend to her basic household responsibilities[2]. Todd Lovelace, a 44-year-old former truck driver from Elizabethtown, Kentucky, and his wife, Lori, have been significantly injured due to the implantation of the Durom Cup in Mr. Lovelace's left hip. His implant failed, and on December 22, 2008, only seven months after the original implantation, he underwent surgical revision. His Durom Cup was found to be completely loose with only fibrous tissue between the cup and socket and no bony ingrowth. Mr. Lovelace never fully recovered. The pain he continues to suffer has diminished his ability to financially care for his wife and family. He is now diagnosed as disabled and is unable to return to work as a truck driver because of his inability to climb in and out of his cab, sit for long periods of time, or perform other necessary job functions[3]. He cannot find other work, since he cannot move around or sit for long periods of time without significant pain. These cases are not unique, but rather, represent a pattern of exactly the same kind of case filed in more than twelve districts throughout the United States, These are informative as typical examples of the all-too-numerous defective Durom Cup cases for which Zimmer has not accepted financial responsibility. They illustrate common questions of fact with respect to the defective hip implant: what Zimmer knew about it, when it knew, what it should have done to correct it, and what it has done instead. Moreover, the particular circumstances of these injuries caused by these defective acetabular components are being replicated across the country. It is imperative that these cases be addressed in a fair, expeditious, and empathetic way. This Panel has the opportunity to ensure such consideration by ordering

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[2] *Walker v. Zimmer Holdings, et al.*, 9:10-cv-80376, Western District of Kentucky

[3] *Lovelace v. Zimmer Holdings, et al,* 3:10-cv-00125, Southern District of Florida

centralization and by selecting an appropriate Transferee Judge.

THE TRANSFEREE COURT SELECTION

The *Ramsey* Movants recommend that this case be centralized before the district court in the Eastern District of Texas. The Interested Party Plaintiffs join in that motion because that district has favorable docket conditions, and because they are home to seasoned and experienced judges who have demonstrable affinities for tackling MDL challenges. The Lovelace and Walker Plaintiffs also ask the Panel to consider the Western District of Kentucky, where the *Lovelace* case was filed as well as the Southern District of Florida, where the *Walker* case was filed.

As matters progress, other districts, and additional judges, may come to this Panel's attention. The undersigned Plaintiffs as well as the plaintiffs in the other cases against Zimmer for the defective Durom Cup come from around the country, and the incidents in which their injuries occurred are likewise scattered across the nation: Arizona, Arkansas, Illinois, Florida, Kentucky, Louisiana, New Jersey, Ohio Texas, Mississippi, and North Carolina. Other incidents, resulting in additional cases, have and will continue to occur across the country. There is no self-evident geographical center for these cases. Zimmer has headquarters in the Northern District of Indiana, but the Durom Cup devices are manufactured in Switzerland. This litigation is a nationwide phenomenon, and no geographical location should be disqualified, if an exceptionally appropriate judge, who is willing and able to take on the challenge of this litigation, emerges, in any district, for this Panel's selection.

CONCLUSION

Accordingly, Interested Party Plaintiffs Lovelace and Walker join in the *Ramsey Movants'* Motion for Transfer and Centralization and respectfully ask that this Panel consider

the Southern District of Florida or the Western District of Kentucky as an appropriate Transferee Court, as well as the Eastern District of Texas.

Dated: March 22, 2010

Respectfully submitted,

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BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE ZIMMER DUROM HIP CUP

MDL Docket No. 2158

PRODUCTS LITIGATION

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Interested Party Response of Personal Injury Plaintiffs Lovelace and Walker in Support of Transfer and Coordination, Notice of Appearance of Wendy R. Fleishman, and this Certificate of Service was served by First Class Mail on March 22, 2010, to the following:

Clerk, United States District Court, District of Arizona, Phoenix Division **Sandra Day O'Connor U.S. Courthouse** **401 W. Washington Street, Suite 130, SPC 1** **Phoenix, AZ 85003-2118**
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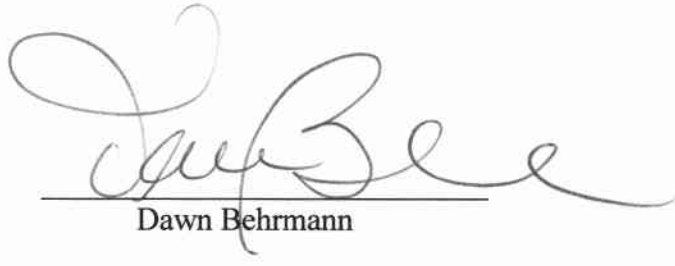
James H. Askew 401 Market Street, Suite 540 Shreveport, LA 71101 **Counsel for Plaintiffs: Carlton Folmar and Linda Folmar**



Dawn Behrmann

BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE ZIMMER DUROM HIP CUP

MDL Docket No. 2158

PRODUCTS LITIGATION

SCHEDULE OF ACTIONS

Case Caption	Court	Civil Action No.	Judge
Plaintiffs Dale B. Bullock and Karen Bullock **Defendants** Zimmer Inc, Zimmer US Inc, and Zimmer Southwest Inc	D. Arizona	2: 10-cv-00334	Susan R. Bolton
Plaintiff Thomas James Stewart **Defendants** Zimmer Holdings, Zimmer Inc, and Zimmer US Inc	W. D. Arkansas	4:08-cv-04074	Harry F. Barnes
Plaintiff Michael Schwartz **Defendant** Zimmer Inc., *a foreign corporation*	S. D. Florida	9:09-cv-80555	Kenneth A. Marra
Plaintiff Larry Lambrix **Defendant** Zimmer Holdings, Inc.	N. D. Illinois	1:09-cv-05527	Susan Wigenton
Plaintiff Kathy Bowling **Defendant** Zimmer, Inc.	E. D. Kentucky	0:10-cv-00013	Henry R. Wilhoit, Jr.

Case Caption	Court	Civil Action No.	Judge
Plaintiff Todd Lovelace and Lori Lovelace **Defendants** Zimmer Holdings, Inc., Zimmer, Inc., Zimmer US, Inc., Zimmer CEP USA Holding Company, Zimmer Production, Inc., Zimmer Manufacturing, B.V., and Zimmer Melia & Associates, Inc.	W. D. Kentucky	3:10-cv-00125	John G. Heyburn, II
Plaintiffs Larry Ramsey and Janice Ramsey **Defendants** Zimmer Inc, Zimmer Holdings Inc, Zimmer Production Inc, Zimmer US Inc, and Roe Corporations	W. D. Louisiana	2:09-cv-04930	S. Maurice Hicks
Plaintiffs Kyle Mark Myers, Lisa Landry Myers **Defendants** Zimmer Inc, Zimmer Holdings Inc, Zimmer Production Inc, Zimmer US Inc, Roe Corporations 1-20	W. D. Louisiana	5:09-cv-00831	Tom Stagg
Plaintiffs Christine Tison and Timothy Tison **Defendants** Zimmer Inc, Zimmer US Inc, Zimmer Production Inc, and Zimmer Holdings Inc	W. D. Louisiana	5:09-cv-00934	S. Maurice Hicks
Plaintiffs Calvin Farmer and Betty Farmer **Defendants** Zimmer Inc, Zimmer Holdings Inc, and Zimmer Production Inc	W. D. Louisiana	5:09-cv-01033	Donald E. Walter

Case Caption	Court	Civil Action No.	Judge
Defendant Zimmer Holdings Inc.			
Plaintiff Robert C. Dodman **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04391	Susan Wigenton
Plaintiff Lawrence P. English **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04392	Susan Wigenton
Plaintiff Linda Esparza **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04393	Susan Wigenton
Plaintiff Dana L. Freed **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04394	Susan Wigenton
Plaintiff Pamela Furman **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04395	Susan Wigenton
Plaintiff William E. Garrett **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04396	Susan Wigenton
Plaintiff Patricia E. Johnson **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04397	Susan Wigenton
Plaintiff David Jones **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04398	Susan Wigenton
Plaintiff	D. New Jersey	2:09-cv-04399	Susan Wigenton

Case Caption	Court	Civil Action No.	Judge
Steve Jugo **Defendant** Zimmer Holdings Inc.			
Plaintiff Mary J. Kasbach **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04400	Susan Wigenton
Plaintiff Janet Kearney **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04401	Susan Wigenton
Plaintiff Timothy Lee **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04402	Susan Wigenton
Plaintiff Connie Lightner **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04408	Susan Wigenton
Plaintiff Valerie Love **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04402	Susan Wigenton
Plaintiff Kimberly Meisenzahl **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04413	Susan Wigenton
Plaintiff Connie J. Miller **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04414	Susan Wigenton
Plaintiff Michael R. O'Brien **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04415	Susan Wigenton

Case Caption	Court	Civil Action No.	Judge
Plaintiff Nancy L. Ray **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04416	Susan Wigenton
Plaintiff Harry Seeger **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04418	Susan Wigenton
Plaintiff Danita Sumter **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04419	Susan Wigenton
Plaintiff Lawrence J. Terry **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04420	Susan Wigenton
Plaintiff Bryan Tulk **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04423	Susan Wigenton
Plaintiff John D. Yeary **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04424	Susan Wigenton
Plaintiff Paul David Jones **Defendants** Zimmer Holdings Inc. and John Doe Defendants 1-20	D. New Jersey	2:09-cv-04622	Susan Wigenton
Plaintiff Mary Muhammad **Defendant** Zimmer Holdings Inc.	D. New Jersey	2:09-cv-04930	Susan Wigenton
Plaintiff Marian Steinberg and Mortimer Steinberg	D. New Jersey	2:10-cv-00639	Jose L. Linares

Case Caption	Court	Civil Action No.	Judge
Defendants Zimmer Inc, John Does 1-10, and ABC-XYZ Corporations			
Plaintiff Lizabeth Ruba **Defendant** Zimmer Holdings Inc.	E.D. North Carolina	5:09-cv-00339	Terrence W. Boyle
Plaintiff Barbara J. Weygandt **Defendants** Zimmer Holdings, Inc., Zimmer, Inc., Zimmer Orthopaedic Surgical Products, Inc., Zimmer US, Inc., and Zimmer GmbH	S.D. Ohio	2:09-cv-00856	John D. Holschuh
Plaintiff Deborah Williams **Defendants** Zimmer, Inc., Zimmer Holdings Inc. Zimmer Production, Inc., Zimmer Caribe, Inc., and Zimmer US, Inc.	S.D. Ohio	3:09-cv-00472	Thomas M. Rose
Plaintiff Christine Brady **Defendants** Zimmer Inc, Zimmer Holdings Inc, and Wilson/Phillips Holdings Inc, *also known as* Zimmer Wilson Phillips	E.D. Texas	2:10-cv-74	T. John Ward
Plaintiff John Allred **Defendants** Zimmer Inc, Zimmer Holdings Inc, and Wilson/Phillips Holdings Inc, *also known as* Zimmer Wilson Phillips	E.D. Texas	2:10-cv-00046	David Folsom
Plaintiffs Christine Walker and Kenneth Walker	S.D. Florida	9:10-cv-80376	Kenneth A. Marra

Case Caption	Court	Civil Action No.	Judge
Defendants Zimmer Holdings, Inc., Zimmer, Inc., and Zimmer USA, Inc.			
Plaintiff Victor Barakat **Defendants** Zimmer Inc., Zimmer Holdings, Inc.	E.D. Texas	2:10-cv-00083	T. John Ward
Plaintiffs Carlton Folmar and Linda Folmar **Defendants** Zimmer US Inc., Zimmer Production Inc., Zimmer Holdings Inc., and Zimmer Inc.	W.D. Louisiana	5:10-cv-00218	S. Maurice Hicks

DOCKET NO. 1596

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE ZYPREXA PRODUCTS LIABILITY LITIGATION

BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D. LOWELL JENSEN, J. FREDERICK MOTZ, ROBERT L. MILLER, JR., KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL

ORDER OF TRANSFER AND SIMULTANEOUS SEPARATION AND REMAND OF CERTAIN CLAIMS

Before the Panel are motions brought, respectively, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in seventeen Eastern District and seventeen Western District of Missouri actions to vacate the Panel's orders conditionally transferring the actions to the Eastern District of New York for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket. In one of the Eastern District of Missouri actions,[1] a physician defendant moves for separation and remand under Section 1407 of the claims against her. Also before the Panel are motions brought, respectively, by defendants Bristol-Myers Squibb Co. (Bristol-Myers) and Janssen, L.P. (Janssen) to vacate one of the Panel's orders insofar as it relates to claims in ten Eastern District of Missouri actions against these defendants.[2] Specifically, these defendants ask the Panel to separate and simultaneously remand the claims against them to the Eastern District of Missouri at the time of transfer. Defendant Eli Lilly and Co. (Lilly) opposes the motions to vacate brought by plaintiffs and the physician defendant and urges inclusion of the actions in the MDL-1596 proceedings, but supports separation and remand under Section 1407 of the claims against the other pharmaceutical defendants.

On the basis of the papers filed and hearing session held, the Panel finds that all 38 actions encompassed by the various overlapping motions involve common questions of fact with the actions

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[1] *Reed Thompson v. Janssen Pharmaceutica, L.P.*, et al., E.D. Missouri, C.A. No. 4:05-1928.

[2] *Gloria Black v. Janssen Pharmaceutica, L.P., et al.*, E.D. Missouri, C.A. No. 4:05-1921; *Cindy Buck v. Janssen Pharmaceutica, L.P., et al.*, E.D. Missouri, C.A. No. 4:05-1922; *Clifford Ferrin v. Janssen Pharmaceutica, L.P., et al.*, E.D. Missouri, C.A. No. 4:05-1923; *Pamela Journey v. Janssen Pharmaceutica, L.P., et al.*, E.D. Missouri, C.A. No. 4:05-1924; *Thomas McGee, etc. v. Janssen Pharmaceutica, L.P., et al.*, E.D. Missouri, C.A. No. 4:05-1925; *Michelle McMahon v. Janssen Pharmaceutica, L.P., et al.*, E.D. Missouri, C.A. No. 4:05-1926; *Brent Thomas v. Janssen Pharmaceutica, L.P., et al.*, E.D. Missouri, C.A. No. 4:05-1927; *Reed Thompson v. Janssen Pharmaceutica, L.P., et al.*, E.D. Missouri, C.A. No. 4:05-1928; *Tamila Watkins v. Janssen Pharmaceutica, L.P., et al.*, E.D. Missouri, C.A. No. 4:05-1930; and *James Keetch v. Janssen Pharmaceutica, L.P., et al.*, E.D. Missouri, C.A. No. 4:05-1931. Janssen is a defendant in each of these ten actions; Bristol-Myers is a defendant in only the last listed action (*Keetch*).

EXHIBIT C

in this litigation previously transferred to the Eastern District of New York, and that transfer of these actions to the Eastern District of New York for inclusion in the coordinated or consolidated pretrial proceedings in that district will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. The Panel further finds that transfer of these actions is appropriate for reasons expressed by the Panel in its original order directing centralization in this docket. In that order, the Panel held that the Eastern District of New York was a proper Section 1407 forum for actions involving claims of liability related to the prescription drug Zyprexa. *See In re Zyprexa Products Liability Litigation*, 314 F.Supp.2d 1380 (J.P.M.L. 2004). Any motions for remand to state court or for dismissal can be presented to and decided by the transferee court. *See, e.g., In re Ivy*, 901 F.2d 7 (2nd Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

The objecting physician defendant argues, inter alia, that the presence of individual questions of fact should militate against inclusion of the claims against her in the MDL-1596 proceedings. We are unpersuaded by this argument. Inclusion of the claims against the defendant doctor pertaining to Zyprexa in the MDL-1596 proceedings has the salutary effect of placing all related claims in this docket before a single judge who can formulate a pretrial program that: 1) prevents repetition of previously considered matters; and 2) allows pretrial proceedings with respect to any individual issues to proceed concurrently with pretrial proceedings on common issues. *See, e.g., In re Ephreda Products Liability Litigation*, 314 F.Supp.2d 1373, 1375 (J.P.M.L. 2004). It may be, on further refinement of the issues and close scrutiny by the transferee judge, that some claims or actions can be remanded to their transferor districts for trial in advance of the other actions in the transferee district. Whenever the transferee judge deems remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. *See* Rule 7.6, R.P.J.P.M.L., 199 F.R.D. at 436-38. The Panel is persuaded, however, that claims involving prescription drugs other than Zyprexa in ten Eastern District of Missouri actions do not share sufficient questions of fact with claims relating to Zyprexa to warrant inclusion of the former claims in MDL-1596 proceedings.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the 38 actions listed on Schedule A are transferred to the Eastern District of New York and, with the consent of that court, assigned to the Honorable Jack B. Weinstein for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

IT IS FURTHER ORDERED that claims in ten actions identified in the second footnote of this order relating to prescription medications other than Zyprexa are simultaneously separated and remanded to the Eastern District of Missouri.

FOR THE PANEL:

Wm. Terrell Hodges
Chairman

SCHEDULE A

MDL-1596 -- In re Zyprexa Products Liability Litigation

Eastern District of Missouri

Charles Reynolds v. Eli Lilly & Co., et al., C.A. No. 1:05-173
Phyllis Edwards v. Eli Lilly & Co., et al., C.A. No. 1:05-174
Linda Faye Robinson v. Eli Lilly & Co., et al., C.A. No. 1:05-176
Jennifer Morlan v. Eli Lilly & Co., et al., C.A. No. 1:05-189
Gilbert Sabala v. Eli Lilly & Co., et al., C.A. No. 2:05-65
William Anthony Ewing v. Eli Lilly & Co., et al., C.A. No. 2:05-66
Valarie A. Chazelle v. Eli Lilly & Co., et al., C.A. No. 4:05-1806
Patrick McDonald v. Eli Lilly & Co., et al., C.A. No. 4:05-1869
Gloria Black v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-1921
Cindy Buck v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-1922
Clifford Ferrin v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-1923
Pamela Journey v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-1924
Thomas McGee, etc. v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-1925
Michelle McMahon v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-1926
Brent Thomas v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-1927
Reed Thompson v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-1928
Tamila Watkins v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-1930
James Keetch v. Janssen Pharmaceutica, L.P., et al., C.A. No. 4:05-1931
Shirley Helms v. Eli Lilly & Co., et al., C.A. No. 4:05-1936
Gloria Lothridge v. Eli Lilly & Co., et al., C.A. No. 4:05-1937
Joy Hufferd v. Eli Lilly & Co., et al., C.A. No. 4:05-1938

Western District of Missouri

Robert Henry v. Eli Lilly & Co., et al., C.A. No. 2:05-4317
Lindell Schmidt v. Eli Lilly & Co., et al., C.A. No. 2:05-4320
Christina Quebedeaux v. Eli Lilly & Co., et al., C.A. No. 2:05-4326
Ronald Forbes v. Eli Lilly & Co., et al., C.A. No. 2:05-4331
Barbara Benton v. Eli Lilly & Co., et al., C.A. No. 2:05-4337
Gina M. Easley v. Eli Lilly & Co., et al., C.A. No. 3:05-5150
Gregory Bradley v. Eli Lilly & Co., et al., C.A. No. 4:05-932
Janice A. Johnson v. Eli Lilly & Co., et al., C.A. No. 4:05-960
Loretta Eads v. Eli Lilly & Co., et al., C.A. No. 4:05-987
Michelle Wolfe v. Eli Lilly & Co., et al., C.A. No. 4:05-990
Connie Stewart v. Eli Lilly & Co., et al., C.A. No. 6:05-3473
James Caffey v. Eli Lilly & Co., et al., C.A. No. 6:05-3474
Raymond Mincks v. Eli Lilly & Co., et al., C.A. No. 6:05-3485
Ron Lipe v. Eli Lilly & Co., et al., C.A. No. 6:05-3487
Bacil Warson v. Eli Lilly & Co., et al., C.A. No. 6:05-3488
Laura Davis v. Eli Lilly & Co., et al., C.A. No. 6:05-3490
Twila May Freeman v. Eli Lilly & Co., et al., C.A. No. 6:05-3504

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: DEPUY ORTHOPAEDICS, INC., ASR HIP IMPLANT PRODUCTS LIABILITY LITIGATION

MDL No. 2197

DEFENDANTS DEPUY ORTHOPAEDICS, INC., JOHNSON & JOHNSON SERVICES, INC., AND JOHNSON & JOHNSON'S STATEMENT OF REASONS WHY ORAL ARGUMENT SHOULD BE HEARD ON THE MOTION OF PLAINTIFF FOR TRANSFER OF ACTIONS TO THE DISTRICT OF NEW JERSEY PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS

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Pursuant to Rule 16.1 of the Judicial Panel on Multidistrict Litigation Rules of Procedure, Defendants DePuy Orthopaedics, Inc., Johnson & Johnson Services, Inc., and Johnson & Johnson ("Defendants") respectfully request oral argument on Plaintiff's Motion for Transfer and Consolidation. If the Panel is inclined to grant Plaintiff's motion, Defendants submit that oral argument will be necessary to further inform the Panel on the progress of the ASR™ XL System cases pending around the country and the merits of transferring the cases to Defendants' proposed venues.

Respectfully submitted,

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BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re DEPUY ORTHOPAEDICS, INC., ASR HIP IMPLANT PRODUCTS LIABILITY LITIGATION

MDL No. 2197

PROOF OF SERVICE

I hereby certify that a copy of the foregoing **DEFENDANTS DEPUY ORTHOPAEDICS, INC., JOHNSON & JOHNSON SERVICES, INC., AND JOHNSON & JOHNSON'S STATEMENT OF REASONS WHY ORAL ARGUMENT SHOULD BE HEARD ON THE MOTION OF PLAINTIFF FOR TRANSFER OF ACTIONS TO THE DISTRICT OF NEW JERSEY PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS** was served via regular U.S. Mail, postage prepaid, this 24th day of September, 2010, upon each attorney listed on the attached Panel Service List.

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Docket: 2197 - IN RE: DePuy Orthopaedics, Inc., ASR Hip Implant Products Liability Litigation
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